

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

DAVID LESURE, JR.,)	CASE NO. 1:08 CV 2293
)	
Plaintiff,)	JUDGE JAMES S. GWIN
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
BOSCH & SIEMENS HOME APPLIANCE)	<u>AND ORDER</u>
GROUP USA, et al.,)	
)	
Defendants.)	

On September 26, 2008, plaintiff *pro se* David Lesure filed this *in forma pauperis* action against Bosch & Siemens Home Appliance Group USA and Clemens Schaller. The complaint alleges that defendants shared information concerning plaintiff with the New Bern, North Carolina Sheriff's Department, the Euclid, Ohio Police Department, and Black Duck Investigations, in violation of a verbal agreement of the parties. Plaintiff asserts this violated his "civil rights" because he was charged with a crime he did not commit. For the reasons stated below, this action is dismissed pursuant to 28 U.S.C. § 1915(e).

Although *pro se* pleadings are liberally construed, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (*per curiam*); *Haines v.*

Kerner, 404 U.S. 519, 520 (1972), the district court is required to dismiss an action under 28 U.S.C. § 1915(e) if it fails to state a claim upon which relief can be granted, or if it lacks an arguable basis in law or fact.¹ *Neitzke v. Williams*, 490 U.S. 319 (1989); *Lawler v. Marshall*, 898 F.2d 1196 (6th Cir. 1990); *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996).

The Civil Cover Sheet submitted by plaintiff with his complaint indicates that the "Nature of Suit" falls within the categories of "Other Contract" and, also, "Other Civil Rights."

Principles requiring generous construction of pro se pleadings are not without limits. *Beaudett v. City of Hampton*, 775 F.2d 1274, 1277 (4th Cir. 1985). A complaint must contain either direct or inferential allegations respecting all the material elements of some viable legal theory to satisfy federal notice pleading requirements. See *Schied v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 437 (6th Cir. 1988). District courts are not required to conjure up questions never squarely presented to them or to construct full blown claims from sentence fragments. *Beaudette*, 775 F.2d at 1278. To do so would "require ...[the courts] to explore exhaustively all potential claims of a *pro se*

¹ A claim may be dismissed *sua sponte*, without prior notice to the plaintiff and without service of process on the defendant, if the court explicitly states that it is invoking section 1915(e) [formerly 28 U.S.C. § 1915(d)] and is dismissing the claim for one of the reasons set forth in the statute. *McGore v. Wrigglesworth*, 114 F.3d 601, 608-09 (6th Cir. 1997); *Spruytte v. Walters*, 753 F.2d 498, 500 (6th Cir. 1985), cert. denied, 474 U.S. 1054 (1986); *Harris v. Johnson*, 784 F.2d 222, 224 (6th Cir. 1986); *Brooks v. Seiter*, 779 F.2d 1177, 1179 (6th Cir. 1985).

plaintiff, ... [and] would...transform the district court from its legitimate advisory role to the improper role of an advocate seeking out the strongest arguments and most successful strategies for a party." *Id.*

To the extent plaintiff seeks to bring an action based on diversity of citizenship, even assuming an otherwise valid claim, there is simply no reasonable suggestion that his claim meets the statutory minimum required to invoke diversity jurisdiction. 28 U.S.C. § 1332.

Further, the only federal statute which conceivably relates to his "civil rights" claim is 42 U.S.C. § 1983. That statute, however, requires action by the defendant "under color of state law." Generally to be considered to have acted under color of state law, the person must be a state or local government official or employee. A private party may be found to have acted under color of state law to establish the first element of this cause of action only when the party "acted together with or ... obtained significant aid from state officials" and did so to such a degree that its actions may properly be characterized as "state action." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). An individual may also be considered a state actor if he or she exercises powers traditionally reserved to a state. *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 352 (1974). Nothing contained in the complaint indicates defendants might have acted under color of state law.

In sum, even liberally construed, the complaint does not

contain allegations reasonably suggesting plaintiff might have a valid federal claim. See, *Lillard v. Shelby County Bd. of Educ.*, 76 F.3d 716 (6th Cir. 1996) (court not required to accept summary allegations or unwarranted legal conclusions in determining whether complaint states a claim for relief).

Accordingly, the request to proceed *in forma pauperis* is granted and this action is dismissed under section 1915(e). Further, the court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

Dated: December 1, 2008

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE